

IN THE SUPREME COURT OF INDIA

ORIGINAL WRIT JURISDICTION

WRIT PETITION (CIVIL) NO.494 OF 2012

IN THE MATTER OF

Justic K.S. Puttaswamy & Anr.

Petitioner/s

Vs.

Union of India & Ors.

Respondents

**SUPPLEMENTARY AFFIDAVIT ON BEHALF OF STATE
OF RAJASTHAN**

MOST RESPECTFULLY SHOWETH:

I, Dr. Hansraj Yadav, Additional Director (UID), Department of DoIT & C, Government of Rajasthan do hereby solemnly affirm as under:

1. That I am the officer-in-charge appointed by the State of Rajasthan in the aforementioned case and as such I am well conversant with the facts and circumstances of the case on the basis of knowledge derived from the records of the case and hence I am competent to depose by way of present Supplementary Affidavit.
2. That this supplementary affidavit is being filed pointing out certain important aspects of the matter which are necessary for complete justice and adjudication in the present matter.

3. Benefit entitlement for residents *vis-a-vis* Citizenship:

The Constitution of India clearly distinguishes between citizens and other residents of the country not only in the matter of fundamental rights, but in other matters also. Part II of the Constitution of India elaborately details the provisions with regard to citizenship. THE CITIZENSHIP ACT, 1955 provides for acquisition and termination of citizenship as well as other matters including issuances of national identity cards. Thus, the Union Government should ensure, a Citizenship Card is issued to all citizens of the country, and this card will denote citizenship status for all legal purposes. The Aadhaar number, which is being given to all residents, should in no way be linked with the citizenship. Yet, it inevitably will, for example, Ration cards, which were in no way even remotely meant to denote citizenship, were used widely across the nation as basis for making electoral cards, thus granting voting rights, which otherwise could only be given to citizens of India. Thus a lot of residents, who are not citizens of India, may have acquired voting cards, and thus citizenship of the country. Even if it is accepted, for sake of argument that Aadhaar card will be used only as a proof of address and identity of a resident of a state for the purpose of ease in access to various socio-economic entitlements, then the question that naturally arises is why a poor country like India - housing the largest number poor in the world - should be spending its scarce resources to provide socio-economic benefits to noncitizens, most

of whom are obviously illegal migrants into the country. Most of the times, the affluent and well-to-do citizens/residents who come into the country legally are not entitled for most of the benefits for which the illegal migrants are.

Relevance of having citizenship before any government identity such as an Aadhaar card is even more relevant to a State like Rajasthan, a border state where sensitivities are more acute, and chances of illegal migration are high.

4. Poor verification of resident's credentials IS cause of concern for the State Government:

The verification mechanism adopted by the U.I.D., especially in case of Non-State Registrars is not stringent enough to:

- Prevent the enrolment of the illegal immigrants.
- Establish/verify identity and address of the individual.

Further, Verifier norms have been changed in phase 1 & 2 of UID enrolments leading to inconsistency/ compromising in the quality of UID data. Introducer concept allows any person to enrol for Aadhaar which leads to legitimisation of his claim not only for all entitlements delivered through Aadhaar, but also for claiming other "Citizenship" benefits, based on this identity.

The unreliability of this data can be gauged from the fact that the Non State Registrars are not operating under the supervision and

control of the State Government. The verification authenticity, thus is an issue in relation to the enrolments been done by them. State strongly advocates a more stringent verification mechanism by deploying government verifiers and to bring the whole enrolment drive of Non-State Registrar under the administrative control of the State Government.

5. Poor delivery of Aadhaar numbers may result in denial of benefits to poor, especially in rural areas

UIDAI has partnered with Department of Post for delivery of Aadhaar letters. Initially Aadhaar numbers were used to be delivered by Speed Post but later shifted to the ordinary post. Delivery of Aadhaar letters of the huge volume by a department that does not have the manpower resources to take on such a huge one time load has been one of the impediments in the success of the project. In many cases, residents could not receive their Aadhaar letters even after more than a year of the enrolment. Provision of getting electronic Aadhaar from portal shall not yield its dividend as the majority of the rural people don't have access to internet. This has led to a situation where the poor and the illiterate are being deprived of benefits, and those who are actually not entitled to benefits are having access to their Aadhaar.

An alternative mechanism in consultation with state government should be developed to ensure successful delivery of Aadhaar letters after proper verification of citizenship to the residents.

6. Service Delivery is mandate of the State Governments:

The Constitution of India provides for a Federal Structure of Governance. It clearly defines the areas of operation of the Union and State Governments and a bare perusal of the lists in seventh schedule would show that most of the subjects of service delivery are mentioned in the State and Concurrent lists. That clearly shows that the State Governments should have clear participation and control over the delivery of services even in the matter of schemes of the Union Government. Even in case of Direct Benefit Transfer (D.B.T.) scheme of Union Government, the benefits under centrally sponsored schemes should flow through state governments (State consolidated fund). State of Rajasthan had launched an IT enabled scheme 'Bhamashah', wherein cash and non cash benefits were to be delivered through IT enabled Points of Service after bio-metric authentication. In the scheme, it was optional for an individual to get enrolled and access the benefits through the L.T. platform.

Therefore, the Aadhaar scheme is misconceived, as it tries to create a delivery mechanism by Government of India, which is in fact best left to the State Governments. The Gol should route the benefits/funds through the Consolidated Fund of the State.

The State of Rajasthan is in process of revamping and upgrading 'Bhamasha' scheme for providing efficient and transparent

channel for service delivery. U.I.D. scheme is clearly an infringement of the federal structure and spirit of the constitution.

7. UID, not in consonance with the federal structure of India-

The software for biometric is propriety of "L1 Identity Solutions Operating Company" which is licensed to UIDAI hence the States do not have any control on biometric data. This is a huge security risk, and as law & order is the domain of the State Governments, Rajasthan has strong reservation against data not being transparently and fully shared with the States.

The population inflation for a state due to enrolment of the non-citizens puts additional pressure on the resources of a comparatively poor state.

Future additional financial burden on the states for paying money to the private companies for extraction of data during the implementation of DBT.

As biometric & demographic particulars are being centrally collected different databases like NPR, NATGRID, National Technical Research Organisation, Crime and Criminal Tracking Network System, National Cyber Coordination Centre etc. and there is all possibility that UID may be converged unilaterally with these databases by Government of India without any consultation with various State Governments. The consultative exercise is a must, looking to the gravity from the view of security and privacy.

Therefore, in accordance with federal philosophy of the constitution, actual implementation of the Aadhaar scheme should be best left to the state governments.

8. UID data Sharing Policy is flawed as State Registrar don't have access to data available with non-State Registrar -

UIDAI shares Aadhaar data with Registrars for the enrolments carried out through Enrolment Agencies appointed by them. State Registrars were facing problems in leveraging Aadhaar for delivery of benefits since data of residents of the State enrolled by non-State Registrars is not available to the State Registrar. UIDAI shares the data with State Registrar for residents pertaining to their own state only and those who have given their consent for data sharing.

Under the present policy Data of the resident of the State enrolled by Non-State Registrars who have not given their consent at the time of enrolment is not shared with State Registrar though it may be shared with non-State Registrar.

Non-State Registrars were allowed to carry out enrolments to speed up the pace of enrolment so that a larger population be catered while rolling out Aadhaar enabled service delivery. Although the state government extended its consent on employing multi-registrars as proposed by the UIDAI and Non state registrar & the state registrar enrolled residents for Aadhaar but UIDAI is not providing access to the complete data to the State registrar contradicting its very purpose of assuming Multi-

Registrar approach for speedy enrolments. Multi-registrar policy was approved on 19-10-2011 and later on revised on 07-06-2012 whereas detailed data sharing policy regarding sharing of data with State was recommended by UIDAI committee on Data Sharing on 28-06-2012 (Copies of circulars is enclosed).

A non-State Registrar may have collected the Aadhaar data of the residents enrolled by its EA who are not necessarily be its customers/beneficiaries though non-State Registrar may have access to UfO data of such residents. Whereas State Registrar is not being provided with this Aadhaar data enrolled by NSR although these residents may be availing benefits/ entitlements under various government welfare schemes.

By not sharing the data of all the residents enrolled by non-State Registrar, the UIDAI is unnecessarily putting additional burden of cost and time on the State machinery for collecting Aadhaar number of such residents by some alternative mechanism. Moreover, absence of complete Aadhaar data with State Registrar has also hampered backend integration of databases of various state governments with Aadhaar.

9. Supremacy of Union Government over Aadhaar Data used by State Governments is against the spirit of the Federal Structure of the nation:

Government of India as well as State Governments are on boarding many welfare schemes to be enabled and authenticated by the Aadhaar. As the UIDAI & Government of India have the

sole right over the Central Identity Data Repository (CIDR), there is a possibility that State specific data and delivery requirements under welfare schemes run by State Government be compromised/overlooked by the Government of India. UIDAI should provide all the demographic and biometric data of all the residents residing in a state to the State Registrar to create a State Resident Data Hub.

10. Use of UID beyond welfare schemes is against the belief and trust of common men of the country:

Enrolment for UID has been voluntary, though, linking of service delivery in welfare schemes like scholarship and Social Security Pensions etc. had played a very vital role in gearing up enrolments speed and a large population got themselves enrolled to continue to avail benefits of such welfare schemes. UIDAI publicity campaign has also revolved around the theme of easy access for availing services/benefits from government and non-government organisations. Thus a common man is of the belief that UID is an instrument to avail their benefits/entitlement. Any possible extension in use of UID beyond this sentiment of the common man shall infringe their belief and trust which should be avoided in a welfare state. The data being collected under U.I.D. at the time of enrolment can be asked for by private parties, such as media management companies, financial companies and even survey agencies (who may like to use the same for election purposes also). This sharing, if allowed will be a great threat from

the point of security, privacy and legal issues. The Union Government, therefore, must devise suitable mechanism for ensuring that the belief and trust of the common men is not infringed.

Looking to the various issues highlighted in the preceding paras, it is apparent that the U.I.D.. scheme though is in principle, a scheme which if implemented properly can result in transparent and efficient service delivery, yet in present form it is a misconceived scheme. Respecting the federal structure of the country, the Gol should provide funds for the scheme and leave the actual implementation to the State Governments, which will take care of proper safe guards for verification, security and privacy.

DEPONENT

VERIFICATION:-

Verified at New Delhi on 10th day of February, 2014 that the contents of the above affidavit are true and correct to the best of my knowledge and belief, and no part of it is false and nothing material has been concealed there from.

DEPONENT